IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

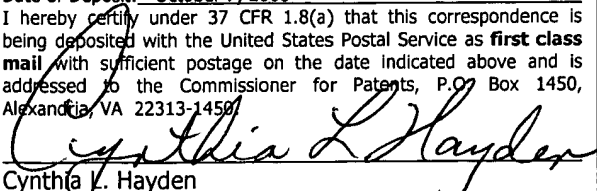|		
In re Applicant:	§	
Jonathan E. Lowthert et al.	§	Art Unit: 2623
	§	
Serial No.: 09/766,133	§	
	§	Examiner: Usha Raman
Filed: January 19, 2001	§	
	§	
For: Content with Advertisement	§	Atty Docket: BKA.0011US
Information Segment	§	

Mail Stop **Appeal Brief-Patents**
Commissioner for Patents
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REPLY BRIEF

The fundamental question on appeal is whether or not the reference teaches an interruption point specifier to indicate a point within said contiguous block of content data stream to interrupt the play of said content data stream and to insert said advertisement in said content data stream. In other words, there must be a content data stream and a specifier to indicate a point within said stream to insert said advertisement.

In the appeal brief, it was pointed out that the reference teaches away from the claimed invention because it is specific that he teaches a way of playing media files from the Internet "without employing traditional streaming methods." See paragraph 8 with emphasis having been added.

Thus, the point of Knepper is to avoid inserting advertisements into a content stream. To avoid this problem, Knepper breaks up the content into discrete files and he breaks up the advertisements into discrete files. This is clearly shown, for example, in Figure 7 where you see

entertainment clip 605 and ad clips 611. He then assemblies what he calls an entertainment media file which is the combination of the discrete entertainment and advertisement files. This point seems to be the basis for the error in the Examiner's analysis.

The Examiner points to places where the reference talks about a media file and the insertion of advertisements within the media file. While this is not inaccurate in and of itself, it is being misread. What is done is to insert advertisements in a sequence between discrete entertainment files to produce an entertainment media file, which is the composite, in an appropriate sequence, of discrete entertainment and advertisement files. There is no suggestion that any stream could be interrupted to insert an ad. As pointed out above, that is exactly what Knepper teaches away from.

Thus, the Answer, at the bottom of page 10, cites the discussion of an entertainment media program in Knepper's paragraph 11. Here, Knepper is referring to a single continuous clip, but the single continuous clip is the result of playing "media files such that the files appear as a single continuous clip." See Knepper, paragraph 11. In paragraph 26, it is explained that the user requests a show "comprising a series of entertainment and advertising media files." Further, Knepper explains that there is an HTML file or text file that provides specific instructions to the client. That file "is a listing of the order of the entertainment and advertisement media files that will make up the show that was requested by the user." See paragraph 34. The client application assembles the entertainment and advertisement media files and begins play back of the various media files in the order specified by the instruction set. See paragraph 37.

The assembled clip comprises the entertainment media files 303 and advertisement files 305, as shown in Figure 4. It is clear that discrete files are combined in an order in the cited reference. The reference is explicit that a fully assembled show clip preferably comprises of separate media files, such as entertainment media file 303 and advertisement media file 305. See paragraph 38. Knepper is explicit that there is no insertion of advertisements into any stream. Instead, discrete files are simply stuck together.

The Answer also relies on paragraph 41 and its language that advertisement media files are inserted therein. But this is reference to the preceding language which indicates that the entertainment media files are blended with the advertisement media files and that the entertainment media files "include indication within the files, or possibly in an external file,

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pointing to where, if at all, the entertainment media files may have the advertisement media files inserted therein." By "therein," it is intended to refer to "therein the overall combined blended structure." This is clear from the overall contents of the cited Knepper application.

While the language could be read to suggest that the advertisement files could be inserted actually within a single advertisement media file, it is clear from the overall context that this is not so. The figures show discrete files and advertisement media being inserted between the entertainment media files. Where to insert them and inserting therein means "inserting therein in the overall blended flow." Nothing is ever explained about how one would actually insert an advertisement file inside a discrete media file. This must be because this was never intended, as clearly shown in the figures and the description.

Moreover, paragraph 43 is explicit that "it is not discernible to the user that a show or show segment containing ads that plays in a single page of the application is actually a number of separate entertainment and advertisement media files." It is respectfully submitted that the Examiner is simply misreading loose language in paragraph 41, which is contrary to the explicit, clearly stated objects, purposes, and mechanisms of the cited reference. The reliance on the unclear language, such as "inserted therein," in the face of explicit language to the contrary merits reversal.

Alternatively, the Examiner argues that a program may comprise more than one entertainment media file and the client computer downloads all of the segments associated with that program in accordance with the instruction set. See paragraph 85. But there is nothing different in paragraph 85. Paragraph 85 simply begins the flow chart that does exactly what was described previously. For example, Figure 8B, block 825, indicates that you play the clip composed of an advertisement media file (if any) and an entertainment media. It is clear that what is being played are discrete files, as explicitly stated.

It is explained in paragraph 88 that the client application follows instructions contained in the download list to insert advertisement media files into the episode at 823. Typically, a single clip would have an advertisement at its beginning, at its end, both, or not at all. The clip's entertainment media files and its requisite advertisement media files are assembled by the client application at 823, according to the download list. Again, the reference is explicit that discrete files are simply concatenated together. There is no insertion of any advertisement into any discrete file.
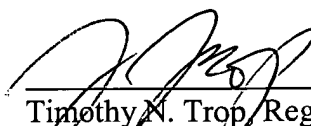
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Further, the Examiner, on page 11, suggests that there are scenarios where the advertisements have already been cached to the client. Of course there are. This is shown in Figure 7. In Figure 7, the advertisement clips are separate from the entertainment clips. The argument is made that the client then proceeds to download all the clips associated with the content program as set forth in the methods in Figure 8, the client receiving the entire episode as a contiguous block. Nothing could be further from the truth. It is clear that there is no contiguous block in the reference. That is the whole point and purpose of the Knepper application. The whole purpose of the Knepper patent application is to assemble an episode from discrete advertisement and non-advertisement media files. This is clearly explained in paragraph 88.

Therefore, the rejection is based on a misreading of the reference. Moreover, the reference deliberately teaches away from the claimed invention. The reference teaches not to use streaming files, which is exactly what is used in the claimed invention.

Therefore, the rejection should be reversed.

Respectfully submitted,

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